Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

U S WEST, INC. COMMENTS

I. INTRODUCTION AND SUMMARY

U S WEST, Inc. ("U S WEST") hereby files these comments on the remaining sections of the Notice of Proposed Rulemaking in the above-captioned docket.[1] In these portions of the NPRM, the Federal Communications Commission ("Commission") proposes, inter alia: 1) to adopt a mandatory detariffing policy for non-dominant domestic interexchange carriers in conjunction with the forbearance authority granted the Commission in the Telecommunications Act of 1996;[2] and 2)

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[1] In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Notice Of Proposed Rulemaking, FCC 96-123, rel. Mar. 25, 1996 ("NPRM"). The Commission previously requested comment on Sections IV - VI (relevant product and geographic definitions, LEC separation requirements, and rate averaging and integration) of the NPRM. U S WEST filed comments relating to these issues on Apr. 19, 1996 ("U S WEST Comments").

[2] NPRM ¶ 27. And see Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 128 § 401 ("1996 Act").

to eliminate the prohibition against bundling of customer premises equipment ("CPE") with the provision of interstate, interexchange services by non-dominant interexchange carriers.[3] In these comments, U S WEST supports forbearance of Section 203 tariff filing requirements; recommends that the Commission permit local exchange carrier ("LEC") contract tariff filings; and urges the Commission to require public disclosure of common carrier interfaces should it permit bundling of CPE and interexchange services.

II. THE COMMISSION SHOULD FORBEAR FROM SECTION 203 TARIFF FILING REQUIREMENTS

In its NPRM, the Commission tentatively concludes that it may, consistent with Section 401 of the 1996 Act, forbear from enforcing the tariffing requirements of Section 203 of the 1934 Communications Act, as amended, as they relate to domestic interexchange services offered by non-dominant carriers.[4] Indeed, the Commission proposes to prohibit the filing of such tariffs.[5] U S WEST agrees that the Commission has the power to forbear from Section 203 tariff requirements for non-dominant carriers, and that it makes sense to do so. U S WEST does not concede, however, that detariffing should be mandatory. Additionally, the Commission should move quickly toward examining the extent to which tariffs are

[3] NPRM ¶ 88.

[4] Id. ¶ 19.

[5] Id. ¶ 34.

appropriate for the provision of interstate access services by all local exchange providers.

As an initial matter, the most critical issue which must be addressed in the context of non-dominant carrier tariffs is that of parity. As demonstrated in U S WEST's earlier filing in this docket, all U S WEST interstate, interexchange services must be classified as non-dominant.[6] It would be a very serious error to permit carriers with much more significant market power (such as MCI Communications Corporation ("MCI") and AT&T Corp. ("AT&T")) to offer non-tariffed service, while requiring that U S WEST compete with tariffed offerings against these companies' non-tariffed offerings. Marketplace realities dictate that U S WEST's interstate, interexchange services (in-region as well as out-of-region) must be regulated on the same non-dominant basis as those of AT&T.

In considering a detariffing regime, the Commission should recognize that the filing of tariffs by interstate carriers is not per se inconsistent with competition. The Commission's authority to permit carriers to tailor their offerings to meet the unique needs of large customers has been well established,[7] and tariffs need not stand in the way of customer-specific tariffs (so long as similar opportunities are available to other customers). The Commission's authority to exempt some of a carrier's offerings from common carrier status (and to permit such offerings to be made without compliance with Title II of the Communications Act) was likewise

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[6] See, generally, U S WEST Comments.

[7] In the Matter of Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd. 5880 (1991) ("Report and Order").

secure under the Communications Act prior to the 1996 amendments.[8] Moreover, even before the 1996 amendments, the law was quite clear that the truly burdensome aspects of even general tariff filings, such as cost support, delay opportunities caused by petitions filed by competitors, and other regulatory hurdles to a market-based offering, were constructs of this Commission, not the Communications Act.[9] The only thing that the Commission was constrained against by the Communications Act itself prior to the 1996 amendments was the actual detariffing of services, and the deletion of prices from tariffed general offerings (although even here the price could be put in the tariff after negotiation of a contract).

Tariffs themselves have not been the main problem -- the Commission's implementing rules have caused most of the significant consequences to the tariff regime prior to the 1996 amendments. This does not mean, however, that the Commission is wrong in its analysis of the possible detrimental impact of tariffs in the competitive marketplace -- particularly to the extent that published tariffs may have resulted in an AT&T price umbrella in the interexchange market.[10]

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[8] Wold Communications, Inc. v. FCC, 735 F.2d 1465, 1475 (D.C. Cir. 1984).

[9] Non-dominant carriers have been able to compete relatively free from regulation even when they filed tariffs. Indeed, when the Commission initially prohibited non-dominant carriers from filing tariffs, it was MCI, the leading non-dominant carrier, which sought court review of this decision. See In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Sixth Report and Order, 99 FCC 2d 1020 (1985), rev'd and remanded sub nom. MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[10] See NPRM ¶ 81.

In a competitive interexchange services environment, U S WEST acknowledges that few carriers would (if given the choice) elect to file tariffs; they would rather offer services and rates established through negotiations with customers. However, U S WEST submits that adoption of a permissive detariffing policy would be practical because tariffs do in fact provide some benefits when a company is offering a general product to the public, as common carriers do on a routine basis. Tariffs also provide customers with a detailed picture of where they stand on their own services, and permit general offerings to be made with a minimum of complexity -- an important issue when a carrier serves millions of customers. Finally, tariffs also afford a method of clarifying in advance the legal rights of the parties.[11] Accordingly, those carriers which choose to offer their services via tariff ought to be permitted the opportunity to do so, provided, of course, that the carrier is willing to undertake all of the legal obligations which tariff filings entail.

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[11] In the Matter of Richman Bros. Records, Inc. v. U.S. Sprint Communications Co., Inc. Primary Jurisdiction Referral from the United States District Court for the District of New Jersey, Order, 10 FCC Rcd. 13639 (1995), appeal pending sub nom. Richman Bros. Records, Inc. v. FCC, No. 96-1044 (D.C. Cir. pet. for rev. filed Feb. 9, 1996).

III. ALL CARRIERS SHOULD BE PERMITTED TO FILE CONTRACT TARIFFS

The NPRM also requests comment on what are generally called "contract tariffs," individually negotiated arrangements tailored to the unique needs of certain large customers.[12] These types of tariffs -- which really are essential in providing meaningful service to sophisticated users -- have long been recognized as serving important public interest needs.[13] Indeed, contract tariffs were available to AT&T before AT&T was classified as non-dominant,[14] and really have nothing to do with non-dominant status. In fact, in the context of a rulemaking seeking to detariff all non-dominant carrier offerings, the concept of contract tariff filings is a bit anomalous.

However, one key aspect of contract tariffs has been overlooked for too long. There is no good reason why LECs should not be permitted to file contract tariffs today on the same basis as was spelled out in the Report and Order.[15] The Commission should declare itself ready to accept LEC contract tariff filings immediately.

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[12] NPRM ¶ 93.

[13] See Report and Order, 6 FCC Rcd. 5880.

[14] Id.

[15] Id.

IV. PUBLIC DISCLOSURE OF COMMON CARRIER INTERFACES IS ESSENTIAL TO COMPETITIVE BUNDLING

In the NPRM, the Commission requests comment on whether non-dominant interexchange carriers should be permitted to "bundle" CPE with their basic transmission services.[16] The Commission, finding it unlikely that non-dominant carriers could engage in unlawful tying arrangements if such bundling were to be permitted, proposes to amend Section 64.702(e) of its rules to permit such "bundling." Section 64.702(e) prohibits a carrier's tariffing of CPE. The Commission finds that public interest and competitive benefits could accrue if non-dominant carriers were to be permitted to offer packages of services which included both basic transmission service and CPE.

We submit that an appropriate approach to this issue is based on a proper understanding of the differences among bundling, packaging and tariffing of CPE. Section 64.702(e) requires that CPE be offered on a "separate and distinct" basis and that CPE not be tariffed.[17] As we see it, this rule has two primary consequences, neither of which interferes with the ability of any carrier (dominant or non-dominant) to market packages of services including CPE and basic transmission service: 1) carriers cannot offer basic transmission service without disclosing the interface between the carrier transmission service and the CPE; and 2) carriers must offer a transmission service which does not include the CPE. These

[16] NPRM ¶ 88.

[17] 47 CFR § 64.702(e).

two principles were preserved even when the Commission acted to permit cellular carriers to "bundle" CPE and basic cellular transmission services.[18]

We submit that permitting bundling of CPE and basic transmission services without continuing to require the public disclosure of common carrier interfaces could have significant consequences beyond those contemplated by the NPRM. Specifically, such "bundling" would result in the development of proprietary common carrier transmission systems, accessible only by those customers who agreed to purchase the specific CPE permitting such access. If this were to happen, the CPE would become, for all intents and purposes, part of the common carrier service -- if a customer cannot purchase the common carrier service without the CPE, the CPE would be subsumed into the entire basic service. This reintegration of CPE into basic carrier service would not only have potentially serious consequences in the CPE market, but it could also significantly impact the new interconnection regime postulated by the 1996 Act, which grants interconnection rights to telecommunications carriers, but not to end users or others who actually utilize CPE. It could also disrupt the basic transmission market, because carriers which could not "bundle" a proprietary network service with CPE (i.e., those subject to the network disclosure rules, either those applicable to the Bell Operating Companies ("BOC") and GTE or those subject only to the "all carrier rule") could be precluded from offering some sophisticated services altogether. In other words, the

[18] In the Matter of Bundling of Cellular Customer Premises Equipment and Cellular Service, Report and Order, 7 FCC Rcd. 4028 (1992).

type of bundling which would permit the development of proprietary transmission systems could have very significant consequences and should not be permitted, at least at this time and in the context of this proceeding.

U S WEST submits that the most logical approach to this issue is to follow the lead taken in the cellular CPE docket[19] -- that is, to permit market-based "bundling" of CPE and transmission services, but to continue to require that CPE and common carrier services be treated, for regulatory purposes, as different products subject to different regulatory regimes. Of greatest consequence, carriers should be required to disclose the interfaces of carrier services they offer. While less critical, it also is better public policy to require that carriers make carrier services available without the "bundled" CPE, although the price differentials between the basic service and the CPE would not, at least in the case of non-dominant carriers, be subject to regulatory scrutiny.

V. CONCLUSION

In deliberating on detariffing and bundling issues, the Commission must observe regulatory parity concepts in order to foster a truly competitive interstate interexchange market consistent with the 1996 Act. The Commission should not require BOCs to file interexchange tariffs if it does not require incumbent

[19] See id.

interexchange carriers to do so as well. The Commission must also require carriers to disclose the interfaces of the services they offer.

Respectfully submitted,

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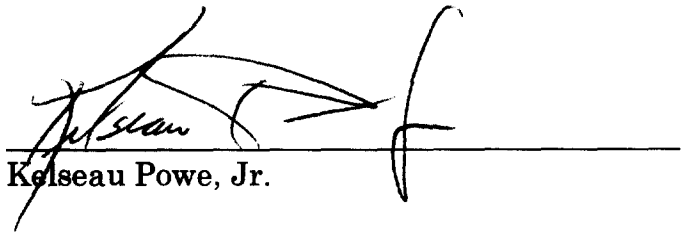
April 25, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 25th day of April, 1996, I have caused a copy of the foregoing **U S WEST, INC. COMMENTS** to be served via **hand** delivery upon the persons listed on the attached service list.



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